

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 3:19-cr-00032-MMD-CLB-1

Plaintiff,

ORDER

v.

JESSE PINA,

Defendant.

I. SUMMARY

Defendant Jesse Pina was indicted on three counts for conspiracy to distribute methamphetamine, possession with the intent to distribute methamphetamine, and possession of a firearm in furtherance of a drug trafficking crime. (ECF No. 17.) Before the Court is Defendant's motion for the Court to hold an evidentiary hearing regarding his conditions of confinement ("Motion").¹ (ECF No. 66.) The Court also reviewed Defendant's medical records from the Washoe County Detention Facility ("WCDF"), where Defendant is being held as he awaits trial, which the government filed under seal at the Court's request. (ECF Nos. 70 (Court's minute order), 71 (government's supplement), 71-1 (sealed medical records).) Because Defendant has not shown that his current conditions of confinement—notably, solitary confinement because he is a Norteno gang member—constitute punishment, the evidence before the Court does not support Defendant's counsel's claim that the conditions of his confinement render him unable to

¹The government filed a response (ECF No. 68), and Defendant filed a reply (ECF No. 69).

1 help prepare his own defense, and as further explained below, the Court will deny the
2 Motion.

3 II. BACKGROUND

4 Defendant's initial appearance in this case occurred on July 5, 2019. (ECF No. 5.)
5 United States Magistrate Judge Carla L. Baldwin continued his detention hearing until
6 July 8, 2019 to allow time to see if there was space for him at the New Frontiers drug
7 treatment facility. (*Id.*) At his detention hearing, because a bed was available at New
8 Frontiers, Judge Baldwin ordered Defendant released on a personal recognizance bond,
9 but on the condition (among others) he remain at New Frontiers—and warned him she
10 would issue a warrant for his arrest if his time at New Frontiers was unsuccessful. (ECF
11 No. 11.) Judge Baldwin subsequently modified his conditions of confinement to no longer
12 include living at New Frontiers because he did not meet their inpatient treatment criteria.
13 (ECF No. 33.)

14 However, on November 7, 2019, Judge Baldwin ordered Defendant detained
15 pending trial because he had cut off his ankle bracelet and absconded from pretrial
16 supervision back in July 2019. (ECF Nos. 34, 35, 36, 44, 45, 64 at 16.) He has been held
17 at WCDF since then.

18 WCDF moved Defendant into segregation (commonly known as 'solitary
19 confinement') basically as soon as he arrived at WCDF because identified himself as a
20 Norteno gang member on a questionnaire he filled out at intake. (ECF No. 68-1 at 1; see
21 *also* ECF No. 68-2.) According to Deputy Rangle, WCDF had issues with Nortenos
22 engaging in gang activity in February 2019, noticed another flare-up of Norteno gang
23 activity in June 2019, and had then dealt with a Norteno hunger strike in October 2019.
24 (ECF No. 68-1 at 1-2.) WCDF therefore decided as a matter of institutional safety and
25 security to keep all Nortenos in segregation. (*Id.*)

26 Deputy Rangle interviewed Defendant on November 7, 2019, and explained to him
27 he would be held in segregation if he remained a Norteno. (*Id.* at 2.) Defendant told
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1 Deputy Rangle that he was an active Norteno gang member, and thus wanted to be
2 housed with other Nortenos. (*Id.*) Deputy Rangle told him that he would be housed in
3 segregation because he was a Norteno, and this could mean he would remain in
4 segregation for an extended period of time. (*Id.*) Deputy Rangle decided to keep
5 Defendant in segregation so as not to jeopardize the safe and orderly functioning of
6 WCDF. (*Id.*)

7 On January 27, 2020, WCDF Deputy Simcox filed a disciplinary report against
8 Defendant because he was trying to lead a group workout of four other Nortenos. After
9 Deputy Simcox told them they could only work out in pairs, Defendant took off his shirt to
10 work out with the one other Norteno Deputy Simcox allowed him to work out with, which
11 Deputy Simcox viewed as disregarding his authority, and an attempt to intimidate him and
12 other deputies. (ECF No. 68-3 at 3-4.)

13 WCDF deputies reviewed Defendant's classification status with him on December
14 9, 2019, January 9, 2020, and February 9, 2020, and he reportedly told them he was
15 doing fine, and would rather stay in segregation instead of ceasing to participate in
16 Norteno gang activities. (ECF No. 68-4.)

17 On March 2, 2020, WCDF deputies determined that Defendant coordinated, led,
18 and participated in a Norteno hunger strike, hoping to persuade WCDF officials to house
19 all Nortenos together instead of in segregation. (ECF No. 68-5.)

20 On March 20, 2020, Defendant filed an emergency motion to reopen his detention
21 hearing based on the threat posed by the novel coronavirus disease ("COVID-19") to
22 incarcerated people generally.² (ECF No. 58.) Judge Baldwin denied his motion in a
23 detailed order, primarily because he did not present any evidence to cause her to
24 reconsider her findings in the confinement order that he had not abided by the terms of

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27 ²The government filed a response (ECF No. 62), and Defendant filed a reply (ECF
28 No. 63).

1 pretrial release, and he was unlikely to abide by any conditions were she to impose them
2 instead of having him detained, in part because of his active role in the Norteno gang.
3 (ECF No. 64 at 16.) She also found his stated concerns about COVID-19 were
4 insufficiently particularized to his individual circumstances and thus did not justify his
5 release. (*Id.* at 17-20.) In addition, Judge Baldwin found that Defendant's proposed
6 release plan—living with his mother in California—would not mitigate his stated COVID-
7 19 concerns (*id.* at 20-22), and instead found his proposed plan would increase the risk
8 that he could facilitate the spread of COVID-19 (*id.* at 22-23). Finally, Judge Baldwin
9 rejected Defendant's argument that his release was necessary for the preparation of his
10 defense. (*Id.* at 23-25.)

11 Defendant did not appeal Judge Baldwin's order. He instead filed the Motion on
12 April 14, 2020. (ECF No. 66.) Meanwhile, according to the medical records the
13 government filed with the Court under seal, Defendant requested and received a visit with
14 a psychiatrist at WCDF in late 2019. (ECF No. 71-1 at 13-14 (sealed).) Moreover, a nurse
15 has been checking on Defendant most days in segregation to monitor his mental state—
16 the records run through April 24, 2020. (*Id.* at 57-111.) The nurse completed a form each
17 time she completed one of these checks. (*Id.*) According to the forms, Defendant's
18 behavior was always 'cooperative,' and the nurse never checked any of the boxes
19 indicating acute mental health distress, or that Defendant required some sort of mental
20 health intervention. (*Id.*) Moreover, other medical records indicate that a mental health
21 nurse visited Defendant on April 15, 2020—one day after he filed the Motion. (*Id.* at 27.)
22 According to the narrative she wrote about her visit, while Defendant said he was having
23 trouble sleeping, he did not want any mental health drugs. (*Id.*) She noted that he did not
24 mention, and she did not observe, any signs of acute mental health issues. (*Id.*)

25 III. DISCUSSION

26 Though the Court's jurisdiction to consider Defendant's conditions of pretrial
27 confinement in this case is limited, the parties—and the Court—agree that there are two

1 limited avenues through which the Court can consider Defendant's conditions of
 2 confinement at WCDF. (ECF No. 68 at 2-3, 4-5.) The first is under *Bell v. Wolfish*, 441
 3 U.S. 520, 535 (1979), and the second allows the Court to consider his conditions of
 4 confinement only to the extent they affect his ability to aid his attorney in his defense, and
 5 therefore obtaining a fair trial. (*Id.*) While the Court finds there is no basis at this time to
 6 order a change in Defendant's conditions of confinement or hold an evidentiary hearing
 7 on this issue, the Court addresses each of these two avenues, in turn, below. As to both
 8 avenues, Defendant primarily challenges the fact that he is held in segregation at WCDF.³
 9 (ECF No. 66 at 1-2 (arguing the mental distress caused by Defendant's solitary
 10 confinement make "consultation regarding the substance of his criminal case virtually
 11 impossible[.]" and stating these "conditions long predate COVID 19[.]".))

12 **A. *Bell***

13 Where, as here, a defendant is detained before trial but following a judicial
 14 determination of probable cause, the government "may detain him to ensure his presence
 15 at trial and may subject him to the restrictions and conditions of the detention facility so
 16 long as those conditions and restrictions do not amount to punishment, or otherwise
 17 violate the Constitution." *Bell*, 441 U.S. at 536-37. "Not every disability imposed during
 18 pretrial detention amounts to 'punishment' in the constitutional sense, however." *Id.* at
 19 537.

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 23 ³The Court agrees with the government (ECF No. 68 at 6) that Defendant's
 24 discussion of the potential impact of COVID-19 on WCDF and thus his mental state in his
 25 Motion (ECF No. 66 at 4-9) is inappropriate. Defendant did not appeal Judge Baldwin's
 26 order denying Defendant's emergency motion to reopen his detention hearing due to
 27 COVID-19, where she specifically considered and rejected Defendant's argument that he
 28 should be released in light of COVID-19 in order to prepare an effective defense (ECF
 No. 64 at 23-25). This order therefore focuses on Defendant's allegations regarding his
 solitary confinement.

1 When it comes to a restriction or disability the government imposes upon a
2 particular pretrial detainee, the Court “must decide whether the disability is imposed for
3 the purpose of punishment or whether it is but an incident of some other legitimate
4 governmental purpose.” *Id.* at 538. “Absent a showing of an expressed intent to punish
5 on the part of detention facility officials, that determination generally will turn on whether
6 an alternative purpose to which the restriction may rationally be connected is assignable
7 for it, and whether it appears excessive in relation to the alternative purpose assigned to
8 it.” *Id.* (citations and internal punctuation omitted). Thus, arbitrary or purposeless
9 restrictions may constitute punishment, but those reasonably related to a legitimate goal
10 do not. *See id.* at 539. Keeping in mind that jail officials know best how to run jails (see
11 *id.*):

12 The Government also has legitimate interests that stem from its need to manage
13 the facility in which the individual is detained. These legitimate operational
14 concerns may require administrative measures that go beyond those that are,
15 strictly speaking, necessary to ensure that the detainee shows up at trial. . . .
Restraints that are reasonably related to the institution’s interest in maintaining jail
security do not, without more, constitute unconstitutional punishment even if they
are discomfoting and are restrictions that the detainee would not have
experienced had he been released while awaiting trial.

16 *Id.* at 540 (footnote omitted).

17 Here, Defendant raised *Bell* as justifying an evidentiary hearing on his conditions
18 of confinement due to him being held in segregation. (ECF No. 66 at 1-2, 9.) The
19 government counters that WCDF decided to house all Nortenos in segregation as a
20 matter of institutional security, and Defendant is being held in segregation because he is
21 an active Norteno who refuses to stop engaging in gang activities—and provided WCDF
22 records that substantiate this explanation. (ECF No. 68 at 2-4.) The government thus
23 responds that WCDF employees’ decision to hold Defendant in segregation stems from
24 their need to manage WCDF. (*Id.*) In reply, Defendant concedes he is a Norteno unwilling
25 to cease gang activities, but explains how some of his particular socioeconomic
26 circumstances led him to join a gang, and how it would be very difficult for him to
27 ‘deprogram,’ or cease gang activities. (ECF No. 69 at 6-7.)

1 The Court does not question why Defendant became a Norteno, nor does it doubt
2 it may be difficult for him to deprogram, but finds his explanation amounts to a concession
3 that WCDF officials are holding him in segregation for a reason legitimately related to
4 their need to manage WCDF while ensuring institutional security. The Court also notes it
5 has seen no evidence, and Defendant has not argued, that anyone at WCDF has a
6 expressed an intent to punish him. See *Bell*, 441 U.S. at 538. Therefore, holding
7 Defendant in segregation at WCDF does not amount to “punishment” as that term is
8 defined in *Bell*.

9 Indeed, the government proffered a memo from Deputy Rangle where he
10 explained why WCDF holds Nortenos in segregation, and stated that he explained to
11 Defendant that his decision to remain an active Norteno meant he would be held in
12 segregation. (ECF No. 68-1.) Moreover, WCDF deputies discussed his classification with
13 Defendant several times, and he chose to remain in segregation rather than deprogram
14 as a Norteno. (ECF No. 68-4.) The government also proffered evidence to the effect that
15 WCDF deputies think Defendant is a Norteno leader at WCDF. (ECF Nos. 68-3, 68-5.) In
16 sum, the government has proffered evidence tending to show that Defendant is a
17 Norteno, and it is holding him in segregation under a policy that is reasonably related to
18 institutional security. Defendant not only fails to rebut this evidence here, but actually
19 confirms it. The Court therefore declines to hold a hearing regarding Defendant’s
20 conditions of confinement under *Bell* because WCDF is not holding him in segregation
21 merely to punish him.

22 **B. Ability to Assist Counsel**

23 Defendant also requests an evidentiary hearing regarding his conditions of
24 confinement because they “are such that [Defendant] is experiencing such profound
25 psychological distress, he is unable to meaningfully confer with counsel regarding
26 anything other than expressing desperation regarding his conditions of confinement.”
27 (ECF No. 66 at 2.) The government concedes this can be a valid basis for seeking court

1 intervention, but argues the Court should not grant Defendant a hearing because he has
2 not proffered any evidence of his mental health condition, he is able to communicate with
3 his counsel despite being housed in segregation, and he has received mental health
4 services at WCDF—and his mental health providers have not indicated he is in any sort
5 of psychological distress. (ECF No. 68 at 4-5.) Defendant replies by again stating that his
6 psychological state is adversely affecting his ability to assist in the preparation of his
7 defense and offering a literature review of academic and popular writing to make the point
8 that solitary confinement is so psychologically damaging it constitutes torture. (ECF No.
9 69 at 1-6.) The Court agrees with the government.

10 The Court does not disagree with Defendant that solitary confinement is
11 psychologically damaging, but declines to grant him a hearing on his conditions of
12 confinement at this time because the limited evidence before the Court does not support
13 his counsel's claim he is in any acute psychological distress rendering him unable to
14 assist in the preparation of his defense. To start, Defendant did not himself proffer any
15 evidence to support his counsel's claims. (ECF Nos. 66, 69.) In contrast, the government
16 proffered WCDF records in which Lieutenant Janet Bailey writes in an email that she had
17 a mental health nurse at WCDF check on Defendant for mental health issues during his
18 hunger strike,⁴ and neither the nurse, or her supervising doctor, thought Defendant should
19 be moved to the infirmary. (ECF No. 68-5 at 7.) This suggests they concluded Defendant
20 was not in acute psychological distress. Thus, the limited evidence the parties presented
21 to the Court does not weigh in favor of holding a hearing.

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24 ⁴Defendant mentions that he protested his conditions of confinement through a
25 hunger strike (ECF No. 69 at 2), but declines to mention he was hunger striking in an
26 attempt to convince WCDF officials to allow Nortenos to be housed together, rather than
27 in segregation (ECF No. 68-5). As explained above, the Court found WCDF has a
28 legitimate interest in housing Nortenos in segregation, and Defendant proffered no
evidence to rebut that finding. Thus, the Court does not accord Defendant's hunger strike
much weight as evidence Defendant is experiencing acute psychological distress.

1 It is therefore ordered that Defendant Jessie Pina's motion for the district court to
2 hold an evidentiary hearing regarding his conditions of confinement (ECF No. 66) is
3 denied.

4 DATED THIS 1st day of May 2020.

A handwritten signature in blue ink, appearing to read 'M. Du', is written above a horizontal line.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE